

In the Supreme Court

OF THE
United States

OCTOBER TERM, 1944

No.

J. R. MASON,

Petitioner,

vs.

EL DORADO IRRIGATION DISTRICT,

Respondent.

BRIEF IN SUPPORT OF PETITION.

OPINIONS BELOW.

The opinion of the Court below has not been officially reported, but it appears in the record at pages 31-34. The District Court opinion appears at R. 5-12.

JURISDICTION.

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code. (28 U.S.C. Sec. 347(a).)

A concise statement of the case appears in the preceding petition, which is hereby adopted and made a part of this brief.

ARGUMENT.

By its final decree in this case the District Court, without any notice, ordered the bonds owned by Petitioner "cancelled, annulled and held for naught as enforceable obligations of the petitioning district, except as herein provided, and that the holders thereof be and they are forever restrained and enjoined from otherwise asserting any claim or demand whatsoever therefor as against the petitioning district or its officers, or against the property situated therein or the owners thereof".

The final decree gave relief beyond that authorized by any statute.

POINT I.

A FEDERAL COURT IS WITHOUT POWER TO INTERFERE WITH THE OPERATION OF THE STATE'S BORROWING POWER WHICH IS EXCLUSIVE, WHEN EXERCISED.

The Federal Courts, whether of law or of equity, are inherently without power to levy taxes or interfere with the application of State taxing mandates, as provided by State decisions.

Meriwether v. Garrett, 102 U.S. 515;

Rees v. Watertown, 19 Wall. 107;

Thompson v. Allen County, 115 U.S. 550;

Yost v. Dallas County, 236 U.S. 50;

Adirondack Ry. v. N. Y., 176 U.S. 335, 349;
Arkansas Corp. v. Thompson, 313 U.S. 132;
Fallbrook v. Cowan, 131 F. (2d) 513 (cert. denied);
Missouri v. Ross, 299 U.S. 72;
Ashton v. Cameron Co., 298 U.S. 513.

POINT II.

THE FINAL DECREE "INTERFERES" WITH THE SOLEMN PLEDGE OF THE STATE TO FAITHFULLY EXERCISE ITS TAXING POWER, DELEGATED TO RESPONDENT FOR THE BENEFIT OF PETITIONER WHO AS BONDHOLDER IS A CESTUI QUE TRUST, ENTITLED TO HAVE TAXES LEVIED AS REQUIRED BY LAW.

Section 83 of the Bankruptcy Act differs radically from other sections of the act, but it did not, even by implication repeal the provisions in Section 64(a). On the contrary the provision in Section 83(c) appears to expressly prohibit any order tending to "interfere" with the execution of State tax mandates, clearly a "political and governmental power".

On the same basic question of the inhibition under Section 64(a) to curb State tax mandates, this Court said in *Mo. v. Ross*, 299 U.S. 72:

"* * * special provisions prevail over general ones which, in the absence of the special provisions, would control."

In construing the same law under which the bonds at bar were issued, this Court said in the bitterly contested *Fallbrook v. Bradley*, 164 U.S. 112, case:

“* * * the proper and fair amount and proportion of the tax that is to be levied on the land with regard to benefits it has received, which is open to the discretion of the State legislature, and *with which this Court ought to have nothing to do.*” (Italics ours.)

Adirondack Ry. v. N. Y., 176 U.S. 335;

Ashton v. Cameron Co., 298 U.S. 513;

Arkansas Corp. v. Thompson, 313 U.S. 132.

The bonds in the instant case are not subject to the tax-rate ceiling or other restrictions over the application of the State's tax power which justified the Circuit Courts in sustaining the decrees in

Equitable Reserve Assn. v. Dardanelle Special School District, Ark., 138 F. (2d) 236 (C.C.A. 8);

Kiles v. Trinchera Irr. Dist., 136 F. (2d) 894 (Colo.).

The Supreme Court of California in *Provident v. Zumwalt*, 12 Cal. (2d) 365, ruled clearly and unequivocally that there is no such limitation upon the taxing power and duties of Respondent.

POINT III.

THE FINAL DECREE AND THE DISCHARGE OF DEBTOR FROM ITS OBLIGATION TO PETITIONER, A CESTUI QUE TRUST, HAVING BEEN ISSUED WITHOUT ANY NOTICE, IS VOID.

The ruling of the Court below that this “proposition is without merit”, appears to rest on an earlier

ruling of the same Court. But, the ruling cited involved an interlocutory decree which did not discharge nor release the debtor from its organic duties, nor did that decree "cancel, annul and hold for naught" the bonds at bar, as did the final decree in the instant case. Neither was there any drastic forfeiture device in that decree, as is inserted in the final decree here.

No provision repealing the required notice to creditors appears in Chapter IX. If the Court is authorized, when issuing orders under Chapter IX, to disregard the requirement of notice as provided in the Bankruptcy Act, Section 58 (11 U.S.C.A. Sec. 94), such authority has not been pointed out by the Court below.

It is not denied that the discharge was signed without notice, and without the knowledge of Petitioner, whose property was taken by the final decree. Obviously, no creditor in a proceeding under Chapter IX can raise the contract or any other clause as a defense against an interlocutory decree, because there is no actual taking of property in that decree. Then, after the creditor's property has been meted out a "death sentence", without notice, by a final decree, it is held to be too late to object!

This reasoning, if sustained by this Court, can only mean that no defense is possible at any time by any creditor whose property and constitutional rights are repudiated by a State agency filing under Chapter IX.

Discharge, without notice, has been held void in the following cases. No contrary decisions are known to Petitioner.

Windsor v. McVeigh, 93 U.S. 274 at 277;

Ellison v. Weintrob, 272 Fed. 466;

In re Langfeldt, 253 Fed. 458;

Sylvan Beach v. Koch, 140 Fed. (2d) 852;

Hansberry v. Lee, 311 U.S. 32.

The ruling by the Court below that this "proposition is without merit", conflicts squarely with the ruling by the U. S. Court of Appeals for the Second Circuit in *In re Stilwell*, 120 F. (2d) 194:

"Where bankrupt gave no notice to creditors of application for discharge, discharge was properly set aside on application of creditors nine years after it was granted, regardless of whether creditors were harmed by failure to give notice. Bkcty. Act, § 58, 11 USCA § 94."

Wherefore Petitioner respectfully requests a ruling by this Court on this question.

POINT IV.

THE FINAL DECREE, AS APPLIED TAKES THE PROPERTY RIGHTS EMBODIED IN THE BONDS OWNED BY PETITIONER IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS TO THE U. S. CONSTITUTION.

The final decree takes property lawfully belonging to Petitioner and gives it, not to the debtor but to the private holders of land titles, whose future tax levies will be curbed by exactly the amount taken by the decree from Petitioner. The decree will neither in-

crease nor decrease the rent value of the taxable land within the district, but will only operate to increase the net rent, after taxes for the title holders to capitalize as unearned increment, at the expense of Petitioner. It is not claimed that there is any law preventing Respondent from levying and collecting the taxes, as required by law, nor any denial that Respondent could and should obey the mandate it is under, to apply and enforce the power to tax the value of land delegated by the State to Respondent, to repay the money loaned by Petitioner.

The statute under which the money was borrowed by Respondent provides for no compensation to landholders who fail, refuse or neglect to pay the taxes required by law, and vests the whole title in Respondent "free of all encumbrances", and is, notwithstanding, entirely constitutional.

Fallbrook I. D. v. Bradley, 164 U.S. 112;

Herring v. Modesto I. D., 95 Fed. 705;

Fallbrook v. Cowan, 131 F. (2d) 513 (cert. denied);

S. San Joaquin v. Neumiller, 2 Cal. (2d) 485;

Anderson-Cottonwood v. Klukkert, 13 Cal. (2d) 191;

Provident v. Zumwalt, 12 Cal. (2d) 365.

Respondent, a State agency in the fulfillment of its delegated governmental function, can not give a valid consent to violate organic inhibitions nor acquire by contract with the R.F.C., authority to lay and collect land taxes sufficient only to satisfy such contract, and to repudiate its equally binding obligations to others.

Neither consent nor submission by a State or its governmental agencies can enlarge the powers of the Congress or its Courts. Petitioner has been cited no case decided by this Court holding that either the bankruptcy clause or the tax clause authorize the Congress or its Courts to trespass the well settled doctrine of immunity as adhered to steadfastly by this Court from *McCulloch v. Maryland*, 4 Wheat. 316; *Pollock v. Farmers L. & T. Co.*, 157 U.S. 429, 158 U.S. 601, to *Faitoute v. Asbury Park*, 316 U.S. 502, where this Court said:

“It would offend the most settled habits of relationship between the states and the nation to imply such a retroactive nullification of state authority over its subordinate organs of government.”

Notwithstanding the 16th Amendment, the bonds at bar are held to be immune from the tax clause. (72 *Op. A.G.* 38 (1937).)

If it is once ever conceded that Congress has the power, under the bankruptcy clause to relieve private holders of land titles from their lawful duty to pay direct *ad valorem* taxes as required by State law, whether with or without State consent, it must be conceded that powerful forces would spring to life, whose influence and ability to apply pressure in other parts of the world are sufficiently familiar to be reckoned as history. That this danger was clearly recognized, even by the leading centralist Hamilton, is made clear in *The Federalist*, No. XXXII, where he said that the authority of the States to lay land

taxes would remain "*independent and uncontrollable*" in "*the most absolute and unqualified sense*" after the adoption of the U. S. Constitution. Also that any federal law "*to abridge them in the exercise of it, would be a violent assumption of power, unwarranted by any article or clause of its Constitution*".

Thomas Jefferson, speaking February 15, 1791 on National Banks, said:

"I consider the foundation of the Constitution as laid on this ground: that 'All powers not delegated to the United States, by the Constitution, nor prohibited by it to the States, are reserved to the States, or to the people.' To take a single step beyond the boundaries thus specifically drawn around the powers of Congress, is to take possession of a boundless field of power, no longer susceptible of any definition."

The final decree which deprives Petitioner of the property contained in his bonds, and which denies him the protection of the law pursuant to which they were issued, is repugnant to the Fifth and Fourteenth Amendments to the Federal Constitution.

Von Hoffman v. Quincy, 4 Wall. 535;
Home Bldg. & Loan v. Blaisdell, 290 U.S. 398;
Worthen v. Kavanaugh, 295 U.S. 56;
Louisville Ld. Bank v. Radford, 295 U.S. 555;
Wood v. Lovett, 313 U.S. 362;
N. Y. Chgo. & St. L. R. v. Frank, 314 U.S. 361;
Murray v. Charleston, 96 U.S. 432;
Spencer v. Merchant, 125 U.S. 345;
Virginia Coupon Cases, 114 U.S. 269;
Fletcher v. Peck, 6 Cranch 87.

CONCLUSION.

The questions involved in this case are basic and fundamental to the very existence of our constitutional system. The Federal Courts in California have interpreted the decision of this Court in the *U.S. v. Bekins*, 304 U.S. 27, case, as an abandonment of the immunity doctrine, opening wide the doors of Federal Bankruptcy Courts for issuing orders that are having the legal and practical effect of curbing local property tax rates without any regard to the property rights of bondholders as such, or the powers and duties of the State agency fixed by law at the time the money was borrowed. No attention whatever has been paid to the restrictive language inserted in the severability clause of the amended Section 81, nor to the prohibition against interference with political or governmental powers contained in Section 83(c).

Petitioner contends that if there is any species of local government bond still immune from federal interference, whether under the tax clause or the bankruptcy clause, it must be the bonds at bar. There is perhaps no other local government law in this Nation that has been more frequently attacked or more thoroughly construed and defended by both this Court and the California Courts, than the epochal law pursuant to which the bonds at bar were voted, issued and sold.

It can not be denied that the powers delegated to respondent by the State of California include the State's authority to borrow money and to issue binding and irrevocable bonds for its repayment. It was State action that authorized the exercise of the State's

borrowing power, prescribed the powers and duties of Respondent to tax and administer all the land within its boundaries, provided tax exemption for all district owned property and land, designated all revenues and property of the district as State owned, but dedicated for the uses and purposes of the Act, including the fulfillment of contractual obligations, according to the trust.

When the Legislature, in the exercise of a trust conferred upon it by the people has, by appropriate legislation executed that trust and has put into operation and effect a mandate that its agency levy and collect direct taxes on the value of specific land, without limitation on the rate of tax or on the number of years necessary to raise the money to fulfill obligations, and has also dedicated the "rents, issues and profits" of land escheated for unpaid taxes, without time limit to enable the agency to keep alive and meet its obligations, and also to hold all property immune and exempt from tax, neither the Legislature at a later session nor the Congress can revoke and nullify such State action, or any contract stemming from it, as does the final decree to the contract in the bonds at bar.

As was said by the Supreme Court of Nevada, speaking through Mr. Justice Orr in the case of *Magee v. Whiteacre*, 106 Pac. (2d) 751:

"It is conceded that the Irrigation District law of Nevada, as well as most of the western States, is patterned after the Wright Act of California
* * * In furtherance of this plan, the Legislature

of the State of Nevada has spoken, and assured those who advanced the capital to make the improvements that the land thus improved shall repay the amounts advanced and expended, and have enacted that a lien shall subsist upon said lands to insure the payment thereof. Such is the announced public policy. It is fair, equitable and just and should not be struck down by the courts unless there is a clear and compelling reason for so doing."

It can not be denied that the California Legislature has equally assured Petitioner, as one who advanced the capital to make the improvements for Respondent "that the land thus improved shall repay the amounts advanced and expended, and have enacted that a lien shall subsist upon said lands to insure the payment thereof". (*Moody v. Provident*, 12 Cal. (2d) 389.)

This Court said in *Arkansas Corp. v. Thompson*, 312 U.S. 673:

"Manifestly, whether or not taxes are 'legally due and owing' to a state depends on the valid laws of that state."

Also, this Court said in *League v. Texas*, 184 U.S. 156:

"A delinquent taxpayer has no vested right in an existing mode of collecting taxes, there is no contract between him and the State that the latter will not vary the mode of collection."

See also,

Wood v. Lovett, 313 U.S. 362.

There is an unfulfilled contract made by the State in the bonds owned by Petitioner, which the final decree here challenged annuls. The sole beneficiaries of the decree, if it stand would be those holding land titles, who are without any "vested right" in the premises, and who, as taxpayers, have no contract with the State.

If a federal tax on interest received by Petitioner from the bonds at bar is repugnant to the Constitution, *a fortiori* reason indicates that a federal order denying Petitioner the interest and principal from the same bonds must be repugnant to the Constitution.

Otherwise, the tax clause is given an inferior rank and dignity to the bankruptcy clause, by this Court.

In *Providence Bank v. Billings*, 4 Pet. 514, this Court said:

"Whatever may be the rule of expediency, the constitutionality of a measure depends not on the degree of its exercise, but on its principle."

In the recent case of *Miller v. Mangus*, 317 U.S. 178, this Court said:

"* * * any final order of judgment which the court could make in the premises would be inconsistent with equity, in contravention of the Constitutional rights of the parties; and contrary to the fundamental purposes of the Bankruptcy Act. The manifest difficulties are insurmountable."

For the above reasons Petitioner respectfully submits that the writ of certiorari should be granted, the

judgment and the opinion of the Court below reversed,
and the proceedings directed to be dismissed.

Dated, San Francisco, California,
August 23, 1944.

Respectfully submitted,

J. R. MASON,

Petitioner in Propria Persona.

